92-359

No. (3)

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

KEENE CORPORATION,

Petitioner,

—v.—

LEONARD ADAMS, *et al.*,

Respondents.

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

Of Counsel:

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IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

JOHN CHAPMAN, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGEMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments

notwithstanding the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff John Chapman's compensatory damages were determined by the Jury to be Three Hundred Twenty-Four Thousand Two Hundred Dollars ($324,200.00). The Court does hereby further find that the Plaintiff John Chapman had negotiated settlements in his case totalling One Hundred Forty-Four Thousand Eight Hundred Dollars ($144,800.00) prior to said verdict. The Court does in addition find that Nine Thousand Six Hundred Dollars ($9,600.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the

appropriate amount of set-offs from the Three Hundred Twenty Four Thousand Two Hundred Dollars ($324,200.00) compensatory verdict shall be One Hundred Thirty-Five Thousand Two Hundred Dollars ($135,200.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was (sic) the Defendants Owens-Corning Fiberglas and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is (sic) therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of One Hundred Eighty-Nine Thousand Dollars ($189,000.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Nineteen Thousand Dollars ($219,000.00) prior to perfecting any

appeal in this matter, plus an additional amount of $22,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of One Hundred Ninety-Four Thousand Dollars ($194,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $20,000.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy.

The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of action from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-832

TERRY LEE ENGLAND,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments

notwithstanding the verdict and for new trials are hereby denied.

The Court does hereby find that the compensatory damages awarded to the plaintiff of Fifteen Thousand Dollars ($15,000.00) have been fully satisfied as a result of pre-trial settlements.

The Court does hereby HOLD and ORDER that the Defendants Keene Corporation and Owens-Corning Fiberglas shall pay no monies to the plaintiff as compensatory damages. However, pursuant to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages and the Defendant Keene Corporation is ordered to pay the plaintiff the sum of Five Thousand Dollars ($5,000.00) in punitive

and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty Thousand Dollars ($30,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Five Thousand Dollars ($5,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $500.00 Dollars.

This Court previously having ruled that the cases listed herein did

not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-763

EVERETT E. JOHNSON, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments

notwithstanding the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Everett E. Johnson's compensatory damages were determined by the Jury to be Fifty-Eight Thousand Five Hundred Dollars ($58,500.00). The Court does hereby further find that the Plaintiff Everett Johnson had negotiated settlements in his case totalling Twenty-Five Thousand Five Hundred Seventy-Five Dollars ($25,575.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the

appropriate amount of set-offs from the Fifty-Eight Thousand Five Hundred Dollars ($58,500.00) compensatory verdict shall be Twenty-Three Thousand Eight Hundred Fifty Dollars ($23,850.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict booth jointly and severally was (sic) the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is (sic) therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Thirty-Four Thousand Six Hundred Fifty Dollars ($34,650.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Sixty-Four Thousand Six Hundred Fifty Dollars ($64,650.00) prior to perfecting

any appeal in this matter, plus an additional amount of $6,500.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty-Nine Thousand Six Hundred Fifty Dollars ($39,650.00) prior to perfecting any appeal in this matter, plus an additional amount of $4,000.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy.

The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

JOSEPH E. SHILOT, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGEMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments

notwithstanding the verdict and for new trials are hereby denied.

The Court does hereby find that the compensatory damages awarded to the plaintiff of Twenty-Two Thousand Dollars ($22,000.00) have been fully satisfied as a result of pre-trial settlements.

The Court does hereby HOLD and ORDER that the Defendants Keene Corporation and Owens-Corning Fiberglas shall pay no monies to the plaintiff as compensatory damages. However, pursuant to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages and the Defendant Keene Corporation is ordered to pay the plaintiff the sum of Five Thousand Dollars ($5,000.00) in punitive

and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty Thousand Dollars ($30,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Five Thousand Dollars ($5,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $500.00 Dollars.

This Court previously having ruled that the cases listed herein did

not involve claims for risk of subsequently developed lung cancer or mesothelioma, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer and colon cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related lung malignancy, including lung cancer or mesothelioma. The Court has specifically ruled that claims for asbestos-related lung malignancies constitute causes of actions separate from claims for asbestos pleural disease, parenchymal asbestosis, laryngeal or colon cancer and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation